

Exhibit P

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * * * CIVIL ACTION
PALESTINE MONETARY * NO. 05-261L
AUTHORITY *
*
VS. * JUNE 16, 2005
*
DAVID STRACHMAN, et *
al * PROVIDENCE, RI
* * * * *

HEARD BEFORE THE HONORABLE RONALD R. LAGUEUX
SENIOR DISTRICT JUDGE
(PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION)

APPEARANCES:

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Holt

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Court Reporter: Anne M. Clayton, RPR
One Exchange Terrace
Providence, RI 02903

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Yaron

for

Authority.

1 THE COURT: Good afternoon, everyone. The
2 matter before the Court is Civil Action 05-261L,
3 the Palestine Monetary Authority versus David
4 Strachman as Administrator of the Estates of
5 Ungar and Erfat Ungar, et al.

6 The matter is here on plaintiff's motion
7 for a preliminary injunction.

8 Will the attorneys identify themselves
9 the record, please.

10 MR. SARLI: Good afternoon, your Honor.
11 Mike Sarli for the Palestinian Monetary

12 And I'd like to introduce your Honor to Haig
13 Kalbian, who is counsel also for the Palestinian
14 Monetary Authority.

15 With your permission, your Honor, he will
16 be presenting the argument today.

17 THE COURT: All right. I've just granted
18 his application to appear pro hac vice.

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19 MR. KALBIAN: Thank you, your Honor.

20 MR. STRACHMAN: Good morning, your Honor.

21 David Strachman for the defendant. With me is

22 Robert Tolchin who represents the defendant in

the

23 same parallel action that was filed last Monday

in

24 New York. We also filed a motion for admission

25 pro hac vice.

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3

1 THE COURT: I've granted that.

2 MR. STRACHMAN: Thank you.

3 THE COURT: Well, I'll hear from the

4 plaintiff's side first. Is the plaintiff

5 presenting any evidence?

6 MR. KALBIAN: No, your Honor.

7 THE COURT: All right. You may proceed.

8 MR. KALBIAN: Thank you, your Honor.

9 Again, my name is Haig Kalbian. I'm with the law

10 firm of Kalbian Hagerty, LLP, Washington, D.C.,

11 and I represent the plaintiff, Palestine Monetary

12 Authority, in this matter.

13 Your Honor, just by way of background,

14 initially, this matter is obviously related to an

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15 underlying case that's been before your Honor for
16 a number of years. And from the caption of the
17 case it appears to be a case that was filed back
18 in 2000, the Estate of Ungar against the various
19 parties including the Palestine Authority and the
20 PLO.

21 The reason we are here, however, your
22 Honor, is as a result of an injunction that this
23 court issued on May 5th of this year. And this
24 an injunction that was issued in the underlying
25 case, I'll call it for ease of reference the

is

Ungar
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1 litigation. It was an injunction that was sought
2 or obtained by the plaintiffs in the Ungar
3 litigation.

4 Now, it's critical to note at the outset
5 that the Palestine Monetary Authority was not a
6 defendant in the Ungar litigation. Your
7 injunction, your Honor, appears to be clear on

its

8 face. However, four days later on May 9th,
9 counsel for the Ungar plaintiffs proceeded to

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10 prepare a document that's attached as Exhibit 2,
11 your Honor, to the Complaint that we filed.

12 And it's important to look closely at
this

13 document. It was prepared by, as I said, by the
14 attorney for the judgment creditors, the
15 plaintiffs in the Ungar litigation. And it
16 purports to be a notice of injunction issued
17 pursuant to Federal Rule Civil Procedure 65(d).

18 And we would respectfully submit that
this

19 notice of injunction prepared by counsel four
days

20 after this Court issued an injunction
21 impermissibly expanded the scope of your Honor's
22 injunction.

23 The document purports to be issued
24 pursuant to Federal Rule Civil Procedure 65(d).
25 We've checked 65(d), actually checked the entire

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5

1 Rule 65. I have not seen anything in the rules
2 that permits counsel to piggyback, if you will,
on

3 an injunction and then sui sponte prepare a
notice

4 of injunction that alters, expands and radically

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5 changes, we believe, the intent of the injunction
6 that your Honor issued on May 5th.

7 The important language in this notice of
8 injunction, again, this is Exhibit 2 to the
9 Complaint, appears in the middle of the page,

your

10 Honor. It says, "Take further notice that the
11 injunction applies to all assets of the PA and

the

12 PLO how ever titled, and that assets of the PA

and

13 PLO are held and/or titled under the names" and
14 then there's a string of entities. I don't
15 believe any of those entities were defendants in
16 the Ungar litigation. And the last entity
17 mentioned is the Palestine Monetary Authority as
18 your Honor can see.

19 Now, this statement, your Honor, is not
20 true. As we've demonstrated in the affidavit

that

21 we've submitted by the governor of the Palestine
22 Monetary Authority, the PMA for short, does not
23 hold any assets of the PA or the PLO nor are the
24 assets of the PA and PLO held or titled under the
25 names of the PMA.

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1 Now, equipped with this notice of
2 injunction, counsel for the judgment creditors
3 proceeded to serve the Bank of New York. We
4 believe he may have served other banks as well,
5 but for our purposes he served the Bank of New
6 York in New York. And upon receipt of this
notice
7 of injunction along with the injunction, to be
8 fair, the Bank of New York proceeded to freeze
9 approximately \$30,000,000 essentially of the
PMA's
10 money. That was done on or about the 18th of May
11 or about nine days after this notice of
injunction
12 is dated.

13 The PMA through its governor found out
14 about this at or about the same time, May 18th.
15 Obviously, it raised a lot of concern. The PMA
16 tried to contact the Bank of New York to try to
17 find out what exactly was happening. The PMA
then
18 moved as expeditiously as possible, given that
the
19 PMA is located on the other side of the globe, to
20 get as much documentation together including this

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21 report prepared by its auditors, which is
22 instructive, we believe. This is Exhibit 4 to
the
23 Complaint, issued by the international accounting
24 firm of Saba and Company, which states -- and
this
25 is dated May 25th, which states that, in fact,

the
□

7

1 PMA is a legal person independent of the PA and
2 proceeds to lay out on the balance sheet of the
3 PMA the fact that we believe is crystal clear
that
4 the PMA or that the PA and PLO assets are not
held
5 or titled in the name of the PMA, notwithstanding
6 the notice of injunction that was issued by
7 counsel for the judgment of creditors.

8 Events began to move rather fast. The
9 governor of the PMA, Mr. Abed, arrived in the
U.S.
10 the weekend of Memorial Day equipped with much of
11 this documentation, including but not limited to
12 Exhibit number 6 -- I'm sorry, Exhibit 4 to the
13 Complaint. And we retained counsel, myself, and
14 my firm in Washington over the Memorial Day

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15 weekend.

16 And Tuesday after Memorial Day, we moved
17 expeditiously to file papers in New York. We
18 tried to file papers on Tuesday. We were
19 unsuccessful. We tried to file some papers,
20 actually, in the case that was open by
21 Mr. Strachman, whereby he domesticated the Rhode
22 Island judgment, this Court's judgment. And we
23 were told by the clerk, well, you're not a party
24 to that case; you need to open a new case.

25 We did that on Friday, June 3rd. On

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8

1 Friday, June 6th, we appeared before a Supreme
2 Court judge in New York, who basically referred
3 us, if you will, back to Rhode Island.

4 THE COURT: But he has the matter. He's
5 hearing the matter.

6 MR. KALBIAN: I'm sorry?

7 THE COURT: He's hearing the matter.

8 MR. KALBIAN: He's hearing the matter.

9 Actually, he's passed the case on to a different
10 judge in New York. I don't know if your Honor's
11 had a chance to look at the transcript.

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12 THE COURT: I did. I read the whole
13 transcript. I've read all the material, every
14 word, every bit of material that you've submitted
15 to me. And it's clear that the case is pending
in
16 the Supreme Court of New York.

17 MR. KALBIAN: Yes, your Honor. And we
18 filed it in New York for a reason.

19 THE COURT: It was only a suggestion on
20 his part that you come and visit with me.

Whether

21 that visit is going to be fruitful is something
22 else again.

23 MR. KALBIAN: I understand. We took it

as

24 a strong suggestion, your Honor, and I think

since

25 the injunction and the notice of injunction

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9

1 emanated from Rhode Island and as a result of the
2 Ungar litigation, we felt that it would be best
3 to
4 come back before your Honor to seek --

4 THE COURT: One of the problems you have
5 is that it seems to me an indispensable party is
6 the Bank of New York, and it is not a party to

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7 this litigation that you have filed.

8 So I, frankly, don't know what you're
9 asking me to do. You're asking me to issue some
10 sort of a preliminary injunction, but I don't

know

11 what that means. Do you want me to enjoin the
12 Bank of New York from doing something?

13 MR. KALBIAN: No. What we'd like your
14 Honor to do is look at the injunction and then
15 look at the notice of injunction that has been
16 prepared.

17 THE COURT: I have.

18 MR. KALBIAN: And to basically deem the
19 notice of injunction void because it
20 impermissibly, we would respectfully submit,
21 expands the scope of the injunction and it
22 contains a statement that the Bank of New York
23 relied on, that is that the assets of the PA and
24 PLO are titled in the name of PMA. That simply,
25 your Honor, is not true.

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10

1 THE COURT: I don't know what the Bank of
2 New York relied on. What's clear from my

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3 injunction is that the PA and the PLO and any
4 agents who are enjoined from sending any funds or
5 properties outside this country. Now, the Bank
6 New York must have made a decision that they
7 thought that the PMA was an agency of the PA or
8 the PLO and had funds of the PA and PLO. And
9 therefore, they froze because otherwise they
10 be held in contempt for not observing the
11 injunction. But the injunction runs against the
12 PA and the PLO and any agents.

13 And that's the question I'd have to
14 here. You show me that the Monetary Authority is
15 not an agency of the PA, and you show me that the
16 Authority has no funds belonging to the PLO or
17 PA.

18 MR. KALBIAN: Well, I think to address
19 your latter part --

20 THE COURT: That's what you have to do in
21 order to get any kind of relief from me, but
22 still, it seems to me that any relief that I
23 grant you is of no consequence, because it's
24 really the Bank of New York that has frozen these

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□ 25 funds. And I don't know why the Bank of New York
11

1 froze these funds.

2 MR. KALBIAN: Well, we believe the Bank
of 3 New York froze the funds because of the notice of
4 injunction.

5 THE COURT: We don't know that. And we
6 don't have anybody here from the Bank of New York
7 who will tell us why they acted that way and why
8 they're concerned about this matter.

9 MR. KALBIAN: As I read the injunction,
involved 10 your Honor, and obviously I have not been
11 in the Ungar litigation at all nor has my client,
12 but as I read your Honor's injunction, it says,
13 "It is hereby ordered and decreed that the PA and
14 the Palestinian Liberation Organization and their
15 officers, agents, servants, et cetera are hereby
16 prohibited, restrained and enjoined from
17 withdrawing, transferring, assigning, et cetera,
18 or in any way removing or affecting a disposition
19 directly or indirectly any and all assets of the
20 PA and/or the PLO how ever titled."

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21 So assuming arguendo without conceding
22 that the PMA, and again we don't concede this,
is, 23 in fact, an officer, agent, servant, the fact of
24 the matter is the PMA does not meet the second
25 part of this injunction. And that is that the

PMA
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1 does not hold any assets of the PA and/or the
PLO.

2 THE COURT: That's a question that I'd
3 have to decide, and it seems to me it requires a
4 good deal of evidence.

5 MR. KALBIAN: I understand, your Honor.
6 And frankly --

7 THE COURT: I had decided off the top of
8 my head based on the papers that I've read, it
9 would appear to me that the Authority does have
10 assets of the PA and the PLO because of certain
11 transactions that were stayed here indicate to me
12 that funds of the PA and PLO were being
13 transferred at least through the Bank of New York
14 to various offices or embassies, whatever they
may 15 be titled.

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16 MR. KALBIAN: And you make a good point,
17 your Honor. And if I could kind of walk you
18 through the schedule that's attached as Exhibit 6
19 to our papers, which is the document generated by
20 the Bank of New York. And you see here from that
21 schedule that the Bank of New York has apparently
22 frozen assets belonging to the PA and the PLO
23 pursuant to your Honor's injunction which they
24 received.

25 However, they've also lumped together

□

13

PMA's

1 other transactions involving the PMA and the
2 name, the Palestine Monetary Authority's name is
3 not mentioned in your injunction. It's only
4 mentioned, your Honor, in the notice of
5 injunction.

PA

6 So arguably, Mr. Strachman may, in fact,
7 be entitled to some of these funds belonging to
8 and the PLO that had been ensnared or frozen by
9 the Bank of New York. But that's not my client.
10 My client is the Palestine Monetary Authority.
11 And just because they show up, I would

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generated 12 respectfully argue, on the same schedule
does 13 by the Bank of New York as the PA and the PLO
14 not make them an agent or a party that is holding
15 assets of the PA or the PLO. And all the Court
16 has in front of it at this time is Mr. Abed's
17 affidavit. He's the governor of the PMA, an
18 educated gentleman, degree from University of
19 California at Berkeley, formerly with the
20 International Monetary Fund where he held one of
21 the highest positions. He's given, your Honor, a
22 sworn declaration under penalty of perjury, and
if
23 he was here, I would put him on the stand to
24 testify. Obviously events have moved fast. He
25 had to go back to take care of the business of
the
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14

1 PMA.
2 But to the extent that this Court wishes
3 to schedule a full evidentiary hearing on a
4 preliminary injunction, we'd be delighted. In
5 fact, I've got lined up people from U.S.
Treasury,

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6 people from the Federal Reserve in New York who
7 are willing to vouch for the fact that the PMA
8 does not, does not hold assets of the PA or the
9 PLO and/or assets of those entities, judgment
10 debtors in the Ungar litigation are not titled in
11 the name of the PMA. And that's why we're here.
12 Suddenly went from these judgment debtors, the PA
13 and the PLO, and without any due process, without
14 any hearing, a notice of injunction appears that
15 suddenly implicates my client without any
hearing,
16 without any due process. And of course, no --
17 there's been no undertaking posted by the Ungar
18 plaintiffs, the judgment creditors, which my
19 reading of Rule 65 especially when you're seizing
20 the assets of a non-party, there's irreparable
21 harm here every day that this situation
continues.
22 It is creating potentially a chaotic situation in
23 the Palestinian territories.
24 THE COURT: They can remedy the situation
25 by posting a bond of \$30,000,000 in New York.

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15

1 Those funds would be freed. That's the way they

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2 can get rid of this problem, and then let it be
3 tried on the merits at some later time.

4 But the problem, the big problem I have
is
5 that I don't know why the Bank of New York acted
6 the way they did. And they're not a party to
this
7 litigation. As a matter of fact, it would seem
to
8 me that the proper place for all these arguments
9 are in New York where the judgment has been
10 registered and where this action has been taken
in
11 order to collect the judgment. And it is
pending.
12 It's pending in the Supreme Court of New York
with
13 all the parties before that court, and it's not a
14 question of the interpretation of my order. My
15 order is clear. What has to be determined now
are
16 facts. And maybe you're prepared to present
those
17 facts, but it seems to me they ought to be
18 presented to the Supreme Court judge in New York.

19 MR. KALBIAN: Well, obviously that --

20 THE COURT: Even if you prove what you
say
21 you could prove here, that there are no funds of

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22 the PA or PLO involved in this \$30,000,000, the
23 fact of the matter is it's the Bank of New York
24 that froze, and I don't know why they froze.

25 MR. KALBIAN: I can represent to the

Court
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16

1 that I've had conversations with counsel for the
2 Bank of New York, and they've told me they relied
3 on the injunction, the notice of injunction
4 prepared by the attorney for the judgment
5 creditors, and a restraining order issued by a
6 court in New York that mirrors, essentially, the
7 language of the notice of injunction.

8 So if you take it back, the problem I
9 would respectfully submit is this notice of
10 injunction. That triggered the whole sequence of
11 events. And I believe that this court is best
12 placed respectfully to look at its injunction, to
13 look at this notice of injunction and see that

the

14 two don't add up, don't match up.

15 THE COURT: Well, they don't. Of course
16 they don't. But the question is, the question
17 is -- the two questions that I posed. Number

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one,

18 is the Palestine Monetary Authority an agency of
19 the PA or the PLO. On the face, it looks like it
20 is. It was created by Yassar Arafat in both
21 capacities as the head of the PA and as the head
22 of the PLO.

23 MR. KALBIAN: It was actually created by
24 the PLO and by the Israelis as a result of the
25 Oslo Accords.

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1 THE COURT: It doesn't matter what caused
2 it to be created. It was created by the
Palestine
3 Authority as an agency of the Palestine
Authority.
4 And then the next question is do they hold funds
5 of the PLO or the PA? You say no.

6 MR. KALBIAN: Absolutely.

7 THE COURT: And I don't know that. That
8 would have to be proven to me. And I'm
suggesting
9 that maybe the best place to prove that is in the
10 Supreme Court of New York --

11 MR. KALBIAN: But I would respectfully --

12 THE COURT: -- where the Bank of New York

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13 is a party. It is not a party here.

14 MR. KALBIAN: I'd respectfully submit to
15 you that the record as it stands now is such that
16 you have the George Abed affidavit, and that's
17 unrefuted, your Honor. And if you look at the
18 Abed affidavit --

19 THE COURT: There may be some questions
of
20 credibility there. I've read it. And it seems
to
21 me that, number one, it's all hearsay, because he
22 just came on board a short time ago. So he can't
23 testify as to what happened when this was
created,
24 whether any funds of the PA were used as capital
25 to capitalize this operation. He makes a
□

18

1 statement that somehow the funds came out of the
2 air, came out as a result of profits.

3 MR. KALBIAN: Out of interest income,
4 exactly, generated by the PMA.

5 THE COURT: Well, it seems to me there
has
6 to be a fund to begin with for some company to
7 start operating or some entity to start

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operating.

8 So I have some serious questions about that. I'd
9 like to see him cross-examined. I'd like to ask
10 him some questions.

11 MR. KALBIAN: Your Honor, I would be
12 delighted to bring him here. I think he makes a
13 very credible witness, as I've said. I've got
14 people who are in Treasury, in the U.S. Treasury
15 Department now and who were formerly with
Treasury
16 who assisted and have given technical assistance
17 to the PMA who have personal knowledge as to the
18 declarations made in the affidavit, the
statements
19 made in the affidavit.

20 THE COURT: All right.

21 MR. KALBIAN: This PMA, if I may
conclude,
22 your Honor, briefly, the law that's attached to
23 the papers, I think it's attached to Mr. Abed's
24 affidavit.

25 THE COURT: I saw it. I've read it all.

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19

1 MR. KALBIAN: For example, it says that
2 the PMA shall hold currency or gold reserves of

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3 the Palestine Authority.

4 Well, the fact of the matter is the
5 Palestinians don't have their own currency. It's
6 not a sovereign state so these things have not
7 happened. This law was created back in '93. The
8 events on the ground have been such since '93

that

9 most of the elements or articles in this law that
10 created the PMA created by the Israelis and by
11 PLO have not happened.

the

12 For example, the PMA is not the fiscal
13 agent for the PA.

14 THE COURT: I understand those things. I
15 understand. I just spent the last five years
16 making a determination that the PA and the PLO

did

17 not have sovereign immunity. And now I hear
18 arguments that are exactly that. They are not
19 sovereign. And it's taken all those years to
20 determine that. What we've had is a great
21 run-around in this case from the people
22 representing the Palestinian Authority and the
23 PLO.

24 MR. KALBIAN: Those are not my clients,

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your Honor.

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20

assets

been

New

Island.

And

1 THE COURT: I understand that. And I
2 understand that there is a judgment here against
3 the PA and the PLO for \$116,000,000, also against
4 the Hamas for that amount. And the plaintiffs in
5 the Ungar case are trying to collect. They're
6 going around trying to find out where these
7 are held.

8 MR. KALBIAN: And apparently, they've
9 able to snare from the schedule of the Bank of
10 York some funds of those judgment debtors at the
11 Bank of New York. We're not --

12 THE COURT: And that's where this case
13 belongs, because I've done my job. I've entered
14 the judgment. There are no funds in Rhode
15 I just refused yesterday to appoint a receiver.
16 And Mr. Strachman will have to go to New York,
17 Washington and other places and institute
18 proceedings there to collect on the judgment.

19 that's where this litigation belongs at this

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20 point.

21 MR. KALBIAN: But, I think, your Honor,
22 respectfully, if your Honor would give some
23 clarity to this injunction, if your Honor would
24 look at the notice of injunction that
25 Mr. Strachman is using to piggy-back on and go to

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21

1 all these jurisdictions, what could potentially
2 happen is you'd have 50 different lawsuits in 50
3 different states.

4 However, if your Honor would hold an
5 evidentiary hearing, where I believe, and I would
6 respectfully submit we can make it crystal clear
7 to this Court that this notice of injunction is
8 void, it is an impermissible expansion of your
9 Honor's injunction.

the

10 THE COURT: If I rule that, that's not
11 end of the matter. Even if I make that ruling
12 right now today, it's not the end of the matter.
13 It's just the beginning of the matter.

14 MR. KALBIAN: If I read what the New York
15 judge said on June 3rd, his first reaction was

why

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16 are you here. Go get clarification from the
17 judge, the federal judge in Rhode Island who
18 issued this. So --

19 THE COURT: My injunction is absolutely
20 clear.

21 MR. KALBIAN: No doubt about it.

22 THE COURT: And this procedure is now in
23 New York. It's in New York because the judgment
24 was registered there, and there are proceedings
25 collect on that judgment. There are proceedings

to

□

22

1 to reach funds and assets of the PLO and the PA.
2 And that's where this case belongs. And whatever
3 I say about this at the moment is really
4 superfluous, because the Bank of New York can do
5 whatever it wants about freezing funds. If it is
6 frightened about being held in contempt or
7 whatever reason, they can freeze those funds.

And

8 that's obviously what they did.

9 But wholly apart from the notice, my
10 injunction is clear. If the Palestine Monetary
11 Authority is an agency of the PA or PLO and it

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12 holds funds of the PA or PLO, it is subject to
13 that injunction.

of 14 MR. KALBIAN: But it doesn't hold funds
15 the PA and PLO.

that 16 THE COURT: That's a question of fact

17 has to be determined, and I am not in a position
18 to determine that. And what I'm suggesting is
19 those facts should be determined in the Supreme
20 Court of New York where this proceeding is
21 pending. I read the judge's comments. He wants
22 to throw it back to me. Well, it's not the first
23 time that a judge is sort of passing the buck.
24 And this is where this proceeding is. It's in

the 25 Supreme Court of New York at the moment.

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23

1 Frankly, I think that's a mistake on
2 plaintiff's part. It should be in the Southern
3 District of New York, the judgment should have
4 been registered there. This should be a federal
5 case where it belongs. But the fact of the
6 is if you want to spend time here in this court

matter

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will 7 bringing witnesses from all over the world, I
8 accommodate you.

your 9 MR. KALBIAN: We're ready to do that,
10 Honor.

11 THE COURT: The point is that I'm going
12 away tomorrow morning, and I won't be back until
13 July 6th, and I'll only be in for one day at that
14 time. And then I have one week, the week of July
15 11th that I will be here. And I have several
16 matters down for that week, which require
17 evidentiary hearings and other matters. But I
18 will schedule it that week, and you can bring all
19 the witnesses. You see most of the time when I
20 hear a motion for preliminary injunction, I
21 require testimony. I'm not going to decide
things 22 off the top of my head.

Honor 23 MR. KALBIAN: I understand. If your
24 recalls, I think it was yesterday when this
25 particular hearing was set. Obviously, had we

had
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hoping 1 the luxury of time -- and that's what we're
2 to do. However, in the meantime, your Honor, I
3 would respectfully request that the Court order
because 4 these judgment creditors to post a surety,
5 if they're wrong, and we believe that they're
6 wrong, damages are being incurred. Damage is
7 being incurred by the PMA.

it 8 If you look at the Rule 65, your Honor,
9 makes it very clear, I would submit, that an
10 injunction to be issued there needs to be a bond
11 or some sort of an undertaking. And --

appropriate 12 THE COURT: I don't think it's
13 in this case. It's your client that has to put
up 14 a bond to free those funds right now. That's the
15 way out for your client.

your 16 MR. KALBIAN: We're ready to do that,
17 Honor. If your Honor orders that, we're ready to
18 post and --

19 THE COURT: That belongs in New York.
20 It's not before me. Now, if you want to have a
21 full-blown hearing on a preliminary injunction in

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22 this case, I'll give it to you.

23 MR. KALBIAN: Thank you, Judge.

24 THE COURT: I don't guarantee there's
25 going to be any favorable result to you as a

□

25

1 result of that.

2 MR. KALBIAN: I understand.

3 THE COURT: But I'll give you the
hearing,

4 and then we'll see where we go from there. And I
5 suggest to you that there's an indispensable

party

6 that is not a party in this case, and that's the
7 Bank of New York. Bank of New York is a party to
8 the Supreme Court action in New York. And so I'm
9 suggesting that's the most appropriate place to
10 get these matters resolved. I have a very full
11 schedule.

12 I haven't heard from Mr. Strachman yet,
so

13 let me hear from him what his positions are on
14 these matters, and then I'll make a final
15 determination of when I set this down for hearing
16 on preliminary injunction.

17 MR. KALBIAN: Thank you, Judge.

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18 MR. STRACHMAN: Good afternoon. Thank
19 you, your Honor. There are a few points I'd like
20 to raise. First, there is absolutely no
21 justification or basis for this case being here.
22 There is no subject matter jurisdiction in this
23 case at all. The case is between PMA, an agency
24 of PA and an estate, my client, and my main
25 clients who are thankfully alive who live in

□

26

1 Israel. As this Court knows, over five years of
2 litigation, Yaron Ungar is not a citizen of any
3 state of the United States. Neither are the
4 defendants in this case, the plaintiffs in the
5 initial case.

other

6 So this is a case between two foreign
7 entities. There's no subject matter jurisdiction
8 in this case. It says very clearly in 1332, my
9 brother cites the wrong subsection where he

refers

10 to a domiciliary of the United States. There is
11 none. The end of the statute says very clearly,
12 it's in Section (c)(2). It says very clearly

that

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13 when you sue an estate or administrator, you look
14 to the citizenship of the domiciliary of the
15 deceased. And as we know from five years of
16 litigation here, that was in Israel.

17 So there's no subject matter jurisdiction
18 over this case.

19 Second of all, my brother is now asking
20 for basically a third bite at this apple. While
21 this case was pending, while the case was on
22 appeal and had not yet -- mandate had not issued,
23 under the Hustler versus Keeton rule, we could

not

24 go to Federal Court. So we domesticated the
25 judgment in state court consistent with the

Second

□

27

1 Circuit's ruling in Hustler versus Keeton. We
2 that.

did

3 And on April 21, before the preliminary
4 injunction that my brother complains of, three
5 weeks before that, we domesticated the judgment
6 there, and we sought a statutory restraining
7 notice. In New York under New York law, there's

a

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8 statutory restraining notice that creditors can
9 file. And I filed a copy of the one that we
10 of April 21. And that's in document number 5.

11 What prevents this money from being
12 released is that restraining notice. And in
13 document number 6 is, in the documents I provided
14 to the Court this afternoon, is the response of
15 the bank in the case of Estate of Yaron Ungar
16 versus Palestine Authority. In that case, in
17 state domestication case, these funds are being
18 held. Not because of this restraining order, but
19 because of the restraining notice that was issued
20 in New York.

21 So the defendants had an opportunity, the
22 plaintiffs here, rather, had an opportunity to go
23 into court there and say we are an aggrieved
24 party; we want to be heard in this action, and
25 they failed to do so.

□

28

1 What they did is a week and a half ago
2 file a separate suit, a suit against -- they had
3 the audacity to sue these victims in state court

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brought

4 in a separate action. They don't bring to the
5 Court's attention the fact that there was a
6 restraining notice in a parallel action. They
7 sort of skip over it here, too, by the way.
8 That's a separate matter that's not really
9 to the Court's attention. They bring a separate
10 suit. In that suit, as your Honor knows from
11 reading the transcript, the judge set a discovery
12 schedule and a briefing schedule.
13 By the end of June, this matter is going
14 to be briefed. It's going to be concluded in New
15 York, and they would have us now have a second
16 bite at the apple up here in Rhode Island. It's
17 already engaged. Both counsel who were in New
18 York were at that hearing are here today. So
19 there's no need for this. This is superfluous.
20 This is a way to try to bully their way into a
21 ruling that they didn't like last Monday when the
22 judge said to them there is no irreparable harm,
23 I'll set it down for a schedule. That's when, by
24 the way, as the Court knows Mr. Abed was present,
25 and he saw fit to show up last week in New York.

□

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his
course,
can't

1 And he showed up and he testified, and he gave
2 spiel just as he did in his affidavit. Of
3 he was unable to come to Court today, and we
4 cross-examine him.

5 But that matter is already underway. And
6 to come to this Court now to file two separate
7 actions against these victims and to cause us to
8 litigate these issues when they're already being
9 litigated in the very first proceeding that was
10 filed at least I think it was April 20th but that
11 restraining notice was April 21 is absurd.

that
circus,

12 And now what you're going to have if the
13 Court grants a hearing in this matter in July,
14 we'll have two separate proceedings on this very
15 same complaint, virtually identical allegations,
16 as well as the third and original really first
17 proceeding, which is the turn-over proceeding
18 we filed in the domestication action. It's an
19 absurdity. It's turning this into another
20 and we're going to be here for another five years
21 in three different courts with the continued sort

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22
Palestinian

of shell game that we've seen with the

23

Authority and the PLO the way they litigate

24

matters.

25

bull
□

So I would urge the Court to take the

30

1

by the horns in this case and to dismiss this

2

action. Your Honor said very clearly in the

3

receivership motion that we filed that collection

4

actions are not to proceed here in Rhode Island

5

but to proceed in the various jurisdictions.

They

6

now are begging us to take other action in a

sense

7

here. We'll be litigating all of these claims

now

8

by any claimant, by any alleged third party here

9

in Rhode Island. Just the opposite of what you

10

said yesterday you weren't going to do and

weren't

11

going to allow the plaintiffs to do.

12

I would also ask the Court to disregard

13

any of the allegations in Mr. Abed's affidavit.

I

14

know that effectively you're not granting the

15

relief today, but I want it to be clear, and I

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16 just want to mention very clearly for the Court
17 the documents that we provided, because it says
18 very clearly everything that your Honor just said
19 about the nature of the PMA and their source of
20 authority and their genesis, if you will.

21 We have letters from Mr. Abed, one to me,
22 one to someone else on effectively Palestine
23 National Authority stationery indicating clearly
24 that the PMA is an agency, subdivision, et
25 of that agency.

cetera,

□

31

1 We have in document number three, which I
2 provided and attached for the Court, the Oslo
3 Accord, which says very clearly that the PA is
4 going to act as the sole financial agent of the
5 PA. The PMA, I think I misspoke. The PMA is the
6 sole financial agent locally and internationally.
7 That exact same language is carried over into the
8 document attached to Mr. Abed's affidavit and
9 that I provided, which is effectively the charter
10 for the PMA.

also

11 It says in several places, and I've

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12 highlighted all those sections, the exact same
13 type of language. They're the guys holding the
14 money for the PA and the PLO. And then we also
15 know from the litigation here and on previous
16 occasions in a different context we provided to
17 the Court a copy of a restraining order that was
18 entered in the International Technologies case
19 against the PLO.

20 In that very case, similarly, these
21 a/k/a's of the PA and the PLO, a whole laundry
22 list of them, were restrained by the Court

exactly

23 for this type of reason. And that's, in fact,

how

24 we got some of these names. And we disclosed

this

25 to the Court years ago, where for a variety of

□

32

1 other reasons we brought this information to the
2 Court's attention.

3 Then on the bottom of the list it says
4 very clearly that that judge restrained the
5 Palestine Monetary Authority. And the piece de
6 resistance, if you will, is the fact that Judge

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was

7 Martin ruled very clearly in his decision that

8 upheld by your Honor, that was not objected to,

9 this portion of the decision was not objected to

not

10 by the defendants, the PA and the PLO, and was

11 appealed by them, and that is that the PMA is a

12 financial arm of the PA and the PLO.

13 So we have overwhelming evidence to

14 suggest that there's a tremendous credibility

what

15 problem with Mr. Abed's statements. And that

16 he's saying about the nature of their authority,

in

17 even if he were allowed to testify as an expert

18 foreign law, which he isn't; he's an economist,

19 even if he was here and was willing to be

20 cross-examined.

for

21 But then we take a look at, if I could

22 just a moment, your Honor, if we look at the

23 documents that are in Item 5, Tab 5 of the

24 materials -- excuse me, Tab 6 of the materials

□

25 that we provided, if we look at the very accounts

33

1 that are in question as your Honor indicated

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2 before, these are transfers virtually exclusively
3 between and on behalf of the PA, the PLO and in
4 large measure the Palestinian Monetary Authority.

5 And if we look at the statement, it says
6 very clearly from the bank, the originator,
7 meaning the guy who wrote the check, not the guy
8 who washed the money, but the guy who wrote the
9 check is the Palestine Monetary Authority. It's
10 their money. It's the money that they got. And
11 their charter says if they have profits, they go
12 to the PMA -- PA rather. If they have
13 deficiencies, they have to be made up by the PA.

14 These are the very funds that they are
15 holding on behalf of the PA and the PLO. They
16 have 57 entries. The overwhelming majority of
17 entries here are directly described as PA or PLO
18 money. The other amounts are very clearly, as we
19 presented here, very clearly significantly
20 evidence belong to the PA. The PA itself is
21 nothing more than an agency.

22 So I would ask the Court to dismiss this
23 case. There's no jurisdiction.

24 THE COURT: There's no motion to dismiss.
25 There's no motion to dismiss at this point, and

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□

34

1 all that's before the Court is a motion for a
2 preliminary injunction. And my inclination is to
3 set that motion for preliminary injunction down
4 for an evidentiary hearing, and then I'll make
5 determinations. If you want to file a motion to
6 dismiss for lack of jurisdiction, maybe that will
7 take precedence before I hear this matter, and
8 maybe this matter will be gone.

9 But as of the moment, I don't hold out
10 much hope that there will be any kind of
11 preliminary injunction issued in this case. So
12 maybe the parties are just spinning their wheels
13 here.

14 MR. STRACHMAN: The concern that I have,
15 Judge, the wheels have already started rolling in
16 New York.

17 THE COURT: That's where the case
belongs.

18 I will tell you right now that's where the case
19 belongs. It's a New York case at this point.

And

20 what funds are frozen are frozen in New York.
21 They're frozen pursuant to New York court

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22 authority, and it's a New York judge that will
23 have to make a determination on this matter.

24 It appears to me that any determination
25 that I make is really academic in this case, and

□

35

the

1 probably this case will be dismissed. But for
2 time being, I will give the plaintiff an
3 opportunity to have an evidentiary hearing. We
4 may be wasting our time, but we'll see. I'd like
5 to hear the evidence, to be perfectly frank, so
6 that I am certain that also factually I'm
7 satisfied what occurred here.

Honor

to

8 MR. STRACHMAN: So to be clear, your
9 is not in any way issuing an order with respect
10 the New York proceedings.

11 THE COURT: Absolutely not.

on

12 MR. STRACHMAN: And those will continue
13 as already --

courts

14 THE COURT: Whatever New York state
15 did, that's within their jurisdiction. What I

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16 have before me now is this case that was filed
17 requesting a temporary restraining order and
18 preliminary injunction. I've denied the
temporary
19 restraining order. I will hold in abeyance any
20 determination on the request for a preliminary
21 injunction and hold an evidentiary hearing.
22 That's as far as we go at this point.

23 MR. STRACHMAN: In light of that, then,
24 Judge, we'd like to have an order with respect to
25 discovery so that we're not surprised here as to

□

36

We'd 1 who these witnesses are who are coming here.

2 like to have them disclosed to us, and we'd like
3 to have an opportunity to examine them in advance
4 as well as any other filings that they make.

5 THE COURT: I don't think that we can do
6 that in the time allotted to us. If at the time
7 of the evidentiary hearing after these witnesses
8 have testified, if you think you need more time,
I 9 will give you more time. We'll take as much time
10 as we need to get to the bottom of this and get
to

061605PMA.txt

11 the facts. But again, my concern is that this is
12 all going to be academic.

13 MR. STRACHMAN: Because the concern that
14 have, Judge, is that we face conflicting rules
15 over these very same accounts, identical accounts
16 that as your Honor indicated are really not
17 subject to the Court. They're really in another
18 jurisdiction. And I'm also concerned that we'll
19 be in a situation where we have the plaintiffs
20 here, the PMA trying to effectively disrupt the
21 proceedings that were already in place in New

I

York

22 on basically one foot and having people come in
23 here without discovery, without advanced
24 knowledge, without information having to litigate
25 where the remaining it's about \$13,000,000 that's

□

37

1 being held in these 57 accounts, where that money
2 is and who owns it in advance of what was already
3 started in New York.

4 So they've had -- if we go forward here,
5 they will be given the opportunity to disrupt

that

6 after the Court has already indicated we should

061605PMA.txt

be

of

of

7 in these foreign states and without the benefit

8 discovery, without the benefit of all the tools

9 litigation that my client should be afforded. I

10 think that's a problem with your Honor's attempt

11 to accommodate this motion with a hearing.

but

12 THE COURT: Well, it may be a problem,

13 it's one that we'll have to work through. Maybe

14 this whole problem will be solved if you file a

15 motion to dismiss. I may dismiss the case before

16 I have a hearing.

17 MR. STRACHMAN: I ask then that you enter

18 a schedule for that, Judge, so that we have some

filed

19 sort of structure as to when the motions are

20 and response and reply.

21 THE COURT: We have our rules that apply.

22 And what I'm going to do is schedule this for an

23 evidentiary hearing on the plaintiff's motion for

24 a preliminary injunction. And I'm going to

25 schedule it for Thursday, July 14, 2005 at 2:00

□

38

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1 p.m. for an evidentiary hearing. And the case
2 will take its course. I'm not entering any other
3 orders at this time.

4 MR. KALBIAN: With respect to planning,
5 Judge, for that hearing, if we file a motion and
6 have a motion --

7 THE COURT: If you file a motion to
8 dismiss, I will hear it before the hearing. And
9 if I decide to grant it, then that will be the
10 of the matter.

11 MR. STRACHMAN: So just so I understand,
12 you're saying in advance of the 14th or on the
13 14th?

14 THE COURT: On the 14th.

15 MR. KALBIAN: Your Honor, obviously we'd
16 want enough time to file any opposition briefs.

17 THE COURT: Certainly.

18 MR. KALBIAN: To the extent Mr. Strachman
19 files his papers on the 10th of July, obviously
20 would need time to respond.

21 THE COURT: Do you plan to file a motion
22 to dismiss?

23 MR. STRACHMAN: We do, Judge.

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24 THE COURT: When do you want to file it?

25 MR. STRACHMAN: I'd like to file it I

□

39

1 guess on Monday or Tuesday, Judge.

2 THE COURT: This Monday or Tuesday?

3 MR. STRACHMAN: Yes.

4 THE COURT: All right. What have we got

the

5 for a date here. I'll give you until Tuesday,

6 21st. You'll have until June 21 to file a motion

7 to dismiss. How much time do you want to answer?

8 MR. KALBIAN: We could put our papers in

9 on or before the 30th of June.

10 THE COURT: All right. Any objection?

11 MR. STRACHMAN: No, Judge.

12 THE COURT: Memoranda will be filed by

13 June 30. And when I get back on July 6th, I'll

14 look over the papers, and maybe I could set that

15 down for hearing separately.

helpful,

16 MR. STRACHMAN: I think that will

17 Judge, in terms of possibly bringing people in.

18 THE COURT: I just have limited time

19 available to me right now, because I'm going to

061605PMA.txt

be

jury

□

40

rest

as

you.

20 away for two weeks, and then I'm coming back for
21 one day to supposedly impanel a criminal jury.
22 And then I was planning to have that criminal
23 trial during that week of July 11th, but I'm not
24 certain that trial will go forward at that time,
25 and that's why other things have been scheduled.

1 Following that week, I'm away for the
2 of the summer. I'm not back here until after
3 Labor Day. I'm a senior judge now. I can take
4 much time as I want.

5 MR. STRACHMAN: It's deserved. Thank

6 THE COURT: It's one of the advantages of
7 being a senior judge. When you're working for
8 nothing, you can take time off.

9 MR. STRACHMAN: Thank you, your Honor.

10 THE COURT: All right. Are we all on the
11 same track now?

12 MR. KALBIAN: Yes, your Honor.

13 THE COURT: Got all those dates?

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14 MR. KALBIAN: Yes.

15 MR. STRACHMAN: Thank you.

16 MR. KALBIAN: Thank you.

17 THE COURT: All right.

18 (Court concluded at 3:00 p.m.)

19

20

21

22

23

24

25

□

C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, do hereby
certify that the foregoing pages are a true and
accurate transcription of my stenographic notes

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in

the above-entitled case.

Anne M. Clayton, RPR

Date